IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

SECOND APPEAL NO. 111 OF 2005

Shri Bhanudas Datta Sonnaik,
aged 38 years, occupation Business,
residing at H. No. 51, Deulwada,
Surla, Bicholim Taluka, Goa. .... Appellant

Versus

Shri Prakash Pundalik Usgaonkar,
alias Prakash Pundalik Naik Usgaonkar,
residing at House No. 62, Deulwada,
Surla, Bicholim Taluka, Goa .... Respondent

Shri S.N. Joshi, Advocate for Appellant.
Shri Amrut Kansar, Advocate for Respondent.

CORAM: **P.V. KAKADE, J.**

DATE: **14th August, 2006**

ORAL ORDER

Heard learned Counsel for both the parties. Perused the record.

2. By order dated 2/03/2006, this Court issued notice to the respondent for final disposal of the appeal at the admission stage, making returnable on 20/04/2006, on framing substantial question of law, as follows:

> "Is the First Appellate Court duty bound to hear either parties in appeal and give them an opportunity of oral hearing for the purpose of making submission while considering the said appeal?"

3. The learned Counsel for the appellant took me through the entire disputed aspects bringing to my notice various questions raised in the memo of appeal stating that those were substantial questions of law. However, as noted above the only question of law required to be considered is already framed and therefore, I need not go into those other issues urged at this stage. Apart from that aspect, I am also satisfied that the other questions which are sought to be agitated as substantial questions of law are not substantial questions but are issues basically revolving around the factual position. Let us now decide the substantial question of law which was raised by this Court by order dated 2/03/06.

4. The factual scenario shows that First Appellate Court after hearing both the parties directed both the parties to file Written Submissions or arguments in order to adjudicate the appeal on merits. Accordingly, the appellant filed Synopsis of Arguments vide Exhibit 'H' in support of the appeal. Now, perusal of the said document shows that though it is titled as 'Synopsis of Arguments', the points of arguments are concisely raised for the purpose of consideration of the lower Court.

5. Thereafter, it is obvious that present respondent also submitted their Written Submissions. Thereon the present appellant filed his reply in writing, stating that it was 'Clarification in support of Synopsis of Arguments dated 4/4/2005 filed by the appellant and dated 2/6/2005 by the respondent'. The said clarification is also seen to be considered and each submission is seen to be taken up and answered over disputed aspect involved in the appeal.

6. On this basis the Appellate Court has adjudicated the appeal on merits and found that there was no merit in the appeal and consequently dismissed the appeal.

Hence the present appeal came to be filed.

7. Now, the question that is sought to be raised before me is that whether the Appellate Court was duty bound to hear the parties orally even after Written Submissions were directed to be filed and accordingly were filed by the parties for adjudication. Also in this regard the learned Counsel for the appellant sought to put reliance on the provisions of **Order 41 Rule 30** of the Civil Procedure Code which stipulate that;

> 'The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court from whose decree the appeal is preferred, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day of which notice shall be given to the parties or their pleaders.'

Therefore, for our purpose the operative terms would be, “after hearing the parties”. Evidently as well as admittedly there is no provision of law showing that parties must be heard orally before adjudicating the appeal on merits. In the present case, in my considered view total compliance was made when both the parties were directed to file their Written Submissions and it must be held that once the Submissions were filed alongwith reply to

the respondents' submissions, there was neither any necessity nor any requirement to hear, nor any obligations on the part of the Appellate Court to hear the parties again orally. This is especially so when admittedly the appellant did not press for oral arguments in addition to written submissions filed by them.

8. The learned Counsel for the appellant sought to put reliance on Apex Court's Judgment in the case of ***State of Rajasthan*** **Versus** ***Harphool Singh (dead) through his LR's*** ((2000) 5 SCC 652) which lays down the duty of the First Appellate Court to make a critical analysis of the matter before it and further observed that it cannot mechanically affirm findings of trial court without due and proper application of mind. In my considered view, this is not the issue involved before me in this appeal nor it is relevant for the purpose of adjudication of the question at hand.

9. In view of this, I hold that there was no obligation on the part of the Appellate Court to hear the parties orally, after an opportunity was given, which was availed of by both the parties, to file their Written Submissions on record, which are found to be exhaustive with written reply there to.

10. In the result, the appeal is devoid of any merit and hence stands dismissed with no order as to costs.

P. V. KAKADE, J.

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